

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION
4

5 *****

6 FEDERAL TRADE COMMISSION,

7 Plaintiff

8 vs.

No. 03-C-3904

9 KEVIN TRUDEAU, SHOP AMERICA (USA),

10 LLC, ROBERT BAREFOOT, and DEONNA

11 ENTERPRISES, INC.,

12 Defendants

13 *****

14 VOLUME: I

15 PAGES: 1-137

16
17 C O N F I D E N T I A L

18 DEPOSITION of DONALD WILLIAM BARRETT, JR.,
19 a witness called on behalf of the
20 Plaintiff pursuant to the Federal Rules of
21 Civil Procedure, before Judith McGovern
22 Williams, Certified Shorthand Reporter
23 No. 130993, Registered Professional
24 Reporter, Certified Realtime Reporter, and
Notary Public in and for the Commonwealth
of Massachusetts, at the offices of
Seyfarth Shaw, Two Seaport Lane,
Suite 300, Boston, Massachusetts 02210,
on Monday, December 22, 2003, commencing
at 10:02 a.m.

25
For The Record, Inc.
Waldorf, Maryland
(301)870-8025

1 APPEARANCES:

2

3 FEDERAL TRADE COMMISSION

4 Daniel Kaufman, Esquire and

5 Laura M. Sullivan, Esquire

6 600 Pennsylvania Avenue, N.W.

7 Washington, D. C. 20580

8 202-326-2675

9 for the Plaintiff

10

11 JENNER & BLOCK, LLP

12 Daniel J. Hurtado, Esquire

13 One IBM Plaza

14 Chicago, Illinois 60611

15 312-923-2645

16 for Kevin Trudeau and

17 Shop America (USA), LLC

18

19 SEYFARTH SHAW

20 Christopher F. Robertson, Esquire

21 Two Seaport Lane, Suite 300

22 Boston, Massachusetts 02210

23 617-946-4800

24 for the Deponent

25

For The Record, Inc.
Waldorf, Maryland
(301)870-8025

1 Q. Okay. We were talking about that earlier?

2 A. Yes. The T-Coral show.

3 Q. Right. That is also referenced, Thomas
4 Williams, in paragraph 9; is that correct?

5 A. Yes.

6 Q. Okay. The document we were talking about,
7 the Richard Zeeb e-mail, Barrett Exhibit
8 No. 9 --

9 A. Yes.

10 Q. -- did you have -- can you tell me who if
11 anyone -- I know you forwarded the e-mail
12 on to Mr. Stern?

13 A. Yes.

14 Q. Did you have any subsequent discussions
15 with Mr. Stern about the e-mail?

16 A. Not that I recall.

17 Q. Okay.

18 MR. KAUFMAN: If we could mark
19 as Barrett Exhibit 11 a document with a
20 Bates stamp KM 005. It is from Allen to
21 Erik re: Kevin Trudeau dated March 4,
22 2002, with a cc to Donald Barrett.

23 (One-page letter dated March 4,
24 2002, to Erik from Allen,
25 production number KM005 marked

1 Exhibit No. 11 for
2 identification.)

3 BY MR. KAUFMAN:

4 Q. And, Mr. Barrett, if you could look at
5 this document and let me know if you
6 recognize it.

7 A. Yes, I do, sir.

8 Q. Okay. And is this a document that you --

9 A. I recognize -- let me --

10 Q. Yes.

11 A. I recognize this -- I don't remember the
12 exact document, but I remember the
13 situation.

14 Q. And you are a cc on this document? Right?

15 A. Yes.

16 Q. Is this a document that you would have
17 received in the ordinary course of
18 business?

19 A. I believe so. It probably came through my
20 fax.

21 Q. What is the situation going on here that,
22 in Barrett No. 11, that you remember?

23 A. Kevin originally out of Shop America was
24 doing the shipment for our product. Then
25 when he found out he couldn't run the

- 1 infomercial, he sued us in Illinois,
2 somewhere in Illinois, for using his name
3 and likeness. You know, not because there
4 were problems with the show, but using his
5 name and likeness, he sued us. And he
6 wound up -- so they don't do any of the
7 shipping at Shop America. He told us to
8 get all of our stuff out of there; they
9 are not going to ship for the program,
10 because he was suing us. Allen Stern
11 moved everything from Shop America to FP
12 Video in Indianapolis. From then on, they
13 did all the shipping, FP Video.
- 14 Q. Is it correct to say it was about March 4,
15 2002, that you first realized that Shop
16 America Marketing Group is no longer going
17 to do the shipping?
- 18 A. Yes. And they did all the shipping up
19 until that point.
- 20 Q. And Don Colton, it says he is the general
21 manager of Shop America. Is that your
22 understanding?
- 23 A. Yes. He does something with -- I don't
24 know if he is the general manager or --
- 25 Q. The first sentence here in Exhibit No. 11

1 refers to Calcium Factor products. Do you
2 know what was the actual name of the
3 product being sold at that point?

4 A. Well, the books, the Calcium Factor, Death
5 by Diet, and the product, Coral Calcium.
6 And I'm not sure at that time if it was
7 Bob Barefoot's Coral Calcium or our Coral
8 Calcium Daily. It was probably a
9 combination of both which they shipped.

10 Q. But at some point pursuant to what we have
11 been calling the infomercial, the product
12 that is shipped is known as Coral Calcium
13 Daily?

14 A. My product, yes.

15 Q. Your product?

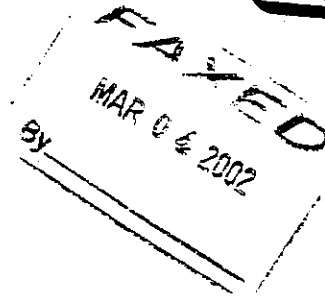
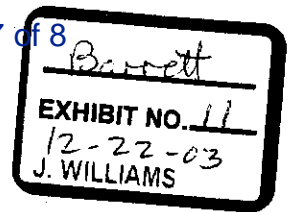
16 A. Yes, sir.

17 Q. Do you know whether Kevin Trudeau ever had
18 any discussions with the Federal Trade
19 Commission regarding the infomercial with
20 Robert Barefoot and Kevin Trudeau?

21 A. Do I?

22 MR. HURTADO: Objection.
23 Foundation.

24 MR. KAUFMAN: Sure. Well, let
25 me move back. Let me mark as Exhibit



March 4, 2002

To: Erik

From: Allen

Re: Kevin Trudeau

Erik:

I received a call today from Don Colton, the General Manager of Shop America, our Fulfillment operation for our Calcium Factor products. Don told me that he was instructed by Kevin Trudeau and/or his representatives to stop shipping our products.

This is, to me, a clear case of "business interference". These are customers and they expect to receive their merchandise, not to mention that we too have paid for the products. I told Don that I would be contacting our lawyer regarding Kevin's interference and the gravity of what he did.

In our counter claim, I believe this fact should be clearly stated and some of the ramifications of his actions.

Thanks.

cc Donald Barrett

CERTIFICATE OF SERVICE

My name is Edward Glennon and I am an attorney with Federal Trade Commission. On September 24, 2004, copies of (1) Plaintiff's Motion for Leave to File a Reply Memorandum of Law in Support of Plaintiff the Federal Trade Commission's Motion to Strike Five of the Affirmative Defenses of Direct Marketing Concepts, Inc., ITV Direct, Inc., and Donald Barrett; and (2) Reply Memorandum of Law in Support of Plaintiff the Federal Trade Commission's Motion to Strike Five of the Affirmative Defenses of Direct Marketing Concepts, Inc., ITV Direct, Inc., and Donald Barrett were served via facsimile and first class United States mail as follows:

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I declare under penalty of perjury that the foregoing is true and correct. Executed this September 24, 2004 at Washington, D.C.



Edward Glennon